

REPRESENTATIVE FOR PETITIONERS:

Tony L. Hiles, Vice President and COO of Von, Inc.

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Yvonne C. Hiles & Von, Inc.,	)	Petition No.	35-005-11-3-5-82420-15
)		
Petitioners,	)	Parcel No.	35-05-14-100-259.000-005
)		
v.	)	County:	Huntington
)		
Huntington County Assessor,	)	Township:	Huntington
)		
Respondent.	)	Assessment Year:	2011

Appeal from the Final Determination of the
Huntington County Property Tax Assessment Board of Appeals

May 30 , 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Are the Petitioners able to challenge the subject parcel’s value or the application of influence factors on a Form 133 petition? And if so, did the Petitioners prove the subject parcel’s assessment is incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2011 assessment appeal by filing a Petition for Correction of an Error (Form 133) with the Huntington County Auditor on May 8, 2015. On October 19, 2015, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On December 4, 2015, the Petitioners filed a Form 133 with the Board.
3. On March 1, 2017, the Board's administrative law judge (ALJ), Jennifer Bippus, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject parcel.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Mr. Hiles appeared for the Petitioners.¹ Deputy County Assessor Julie Newsome and County Assessor Terri Boone appeared for the Respondent. All of them were sworn.
5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	“Description of property,”
Petitioners Exhibit 2:	Flood zone map,
Petitioners Exhibit 3:	Aerial photograph of the subject property,
Petitioners Exhibit 4:	Subject property record card,
Petitioners Exhibit 5:	2010 Special Message to Property Owner (Form TS-1A),
Petitioners Exhibit 6:	2012 Notice of Assessment of Land and Structures (Form 11),
Petitioners Exhibit 7:	Property record card for 228 North Brawley Street,
Petitioners Exhibit 8:	Aerial photograph of 228 North Brawley Street,
Petitioners Exhibit 9:	2002 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 56, 57,
Petitioners Exhibit 10:	2011 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 43, 44, 45, 46, 47, 48, 49.
6. The Respondent offered the following exhibits:

Respondent Exhibit 1:	Aerial photograph of the subject property,
Respondent Exhibit 2:	Subject property record card.
7. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 133 with attachments,
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¹ Mr. Hiles serves as the Vice President and COO of Von, Inc.

Board Exhibit B: Hearing notice dated January 26, 2017,
Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a vacant residential lot located on Lindley Street in Huntington.
9. The PTABOA determined a total assessment of \$6,400.
10. The Petitioners requested a total assessment of \$100.

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

12. The subject property's assessment is too high. Approximately 99% of the lot is located in a "flood zone." There is no access to the lot because a drainage ditch runs across the front and an undeveloped alley is at the rear. The lot also lacks utilities. Because of the various "restrictions," negative influence factors should be applied. *Hiles argument; Pet'rs Ex. 1, 2, 3.*
13. In assessing the property, "assessment standards set by the State" were not followed. Specifically, "through error or omission...the taxpayer was not given credit for an exemption or deduction permitted by law." For example, an "empty lot" in the area "is supposed to get a 50% reduction in the cost or assessed value." While the amount of an influence factor may require subjective judgment, the question of whether to apply an influence factor is objective. *Hiles argument; Pet'rs Ex. 9, 10.*

14. In an effort to prove the subject property is over assessed, the Petitioners presented an assessment of a nearby “base lot” located at 228 North Brawley Street. This property is similar to the subject property because it is also located in Gepharts Addition and is “nearly” the same size. But this lot “has access” and a home could be built on the lot. This property was assessed in 2009 at \$2,900 and reassessed in 2012 at \$3,400. *Hiles argument; Pet’rs Ex. 7, 8.*

RESPONDENT’S CONTENTIONS

15. The application of influence factors is subjective and cannot be challenged via a Form 133. The property record card has been reviewed and “no data errors” were made in computing the assessment. *Newsome argument; Resp’t Ex. 1, 2.*

ANALYSIS

16. The Petitioners seek to correct alleged errors in the 2011 assessment via a Form 133 petition, which the Department of Local Government Finance (DLGF) has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.² But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. These forms are not for changes that require subjective judgment.³ Ind. Code § 6-1.1-15-12; *O’Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. of Tax Comm’rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. of Tax Comm’rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm’rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

² Additionally, the Petitioners cannot avoid the statutory time limitations associated with the Form 131 review process by filing their claim on a Form 133. See *Williams Indus. v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). See also *Lake Co. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-1237 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

³ To the extent the Petitioners offered any valuation evidence, the Board will not consider it.

17. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “Where a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
18. Subjective judgment is required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. Assessors use influence factors to account for how those conditions affect an individual parcel’s value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 43. Because it is directly tied to the determination of value, the estimation of the appropriate influence factor percentage, if any, is subjective. Regarding the Petitioners’ claim that state law requires an objective application of a negative influence factor if certain conditions apply, the case law is clear that influence factors are not appealable via a Form 133.

SUMMARY OF FINAL DETERMINATION

19. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.